

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVIDA CONOVER,

Plaintiff,

-against-

CAPITAL MANAGEMENT SERVICES, LP,

Defendant.

**VERIFIED COMPLAINT and DEMAND
FOR JURY TRIAL**

NOW COMES Plaintiff, DAVIDA CONOVER ("Plaintiff"), by and through her attorneys, Krohn & Moss, Ltd., for her Verified Complaint against Defendant, CAPITAL MANAGEMENT SERVICES, LP ("Defendant"), alleges as follows:

Nature of the Action

1. This action is brought by Plaintiff pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq* ("FDCPA").

Parties

2. Plaintiff is a natural person residing in Rochester, New York.

3. Plaintiff is allegedly obligated to pay a debt and is a consumer as defined by 15 U.S.C. § 1692a(3).

4. Defendant is a limited partnership having its principal place of business located in Buffalo, New York.

5. Defendant is a debt collector as defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

Jurisdiction and Venue

7. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”

8. Because Defendant conducts business in the state of New York, personal jurisdiction is established

9. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

10. Declaratory relief is available pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 - 2202.

Factual Allegations

11. Defendant constantly and continuously places collection calls to Plaintiff, typically one to three calls a day on a virtual daily basis, seeking and demanding payment for an alleged consumer debt.

12. Defendant informed Plaintiff that Defendant would collect the alleged debt by “any means necessary” if Plaintiff did not make an immediate payment.

CLAIM FOR RELIEF

13. Defendant’s violations of the FDCPA include, but are not limited to, the following:


- a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person;

- b. Defendant violated §1692d(5) of the FDCPA by causing a telephone call to ring and/or engaging Plaintiff in telephone conversations repeatedly and/or continuously with the intent to annoy, abuse or harass the Plaintiff;
14. Plaintiff is entitled to her attorney's fees and costs incurred in this action.
15. This case presents an actual and justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. §§ 2201 - 2202.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

- (1) Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k;
- (2) Reasonable attorneys' fees, costs pursuant to 15 U.S.C. § 1692k; and
- (3) Awarding such other and further relief as may be just, proper and equitable.

Dated: July 7, 2010

KROHN & MOSS, LTD.
By: 
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, DAVIDA CONOVER, hereby demands a jury trial in this matter.

VERIFICATION

STATE OF NEW YORK)

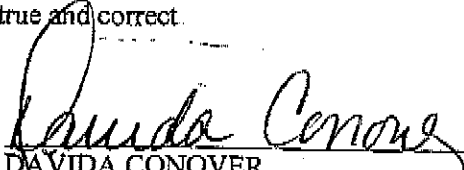
COUNTY OF ULSTER)

Plaintiff, DAVIDA CONOVER, declares as follows:

1. I am the Plaintiff in this civil proceeding;
2. I have read the foregoing Verified Complaint prepared by my attorneys and I believe that all of the facts contained therein are true and correct, to the best of my knowledge, and formed after reasonable inquiry;
3. I believe that this civil Complaint is well ground in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law;
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it;
6. Each and every exhibit I have provided to my attorneys, which has/have been attached to this Complaint, is/are true and correct copy(s) of the original(s); and
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated the exhibit(s), except that some of the attached may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, DAVIDA CONOVER, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 7/15/10


DAVIDA CONOVER